

Application No. 10/675,820  
Amendment dated January 23, 2009  
Reply to Final Office Action of July 25, 2008

**Amendments to the Claims:**

This listing of claims will replace all prior versions, and listings, of claims in the application:

**Listing of Claims:**

1. (currently amended) A guard for use in human spinal surgery, comprising:  
a body having a leading end and an opposite trailing end, said body having a first portion and a second portion in pivotal relationship to one another between an open position and a closed position, said first and second portions having at least in part opposed interior arcuate portions, respectively, said first and second portions defining an opening for providing a protected pathway to adjacent vertebral bodies and a disc space therebetween, said first and second ~~portion~~ portions being pivotal about an axis that passes through at least a portion of the pathway, said opposed interior arcuate portions of said first and second portions of said body being parallel to one another when said body is in the closed position, said opposed interior arcuate portions of said first and second portions of said body being angled to one another when said body is in the open position, said opening defined by said first and second portions of said body being generally circular when said body is in the closed position, said opposed interior arcuate portions being adapted to guide there through a surgical instrument, said body having an exterior surface that has opposed upper and lower surfaces oriented toward the adjacent vertebral bodies, respectively, said upper and lower surfaces being at least in part arcuate, said exterior surface of said body having opposed side surfaces, said side surfaces being at least in part arcuate, said first and second portions of said body when in the closed position forming a tube.
2. (original) The guard of claim 1, wherein said opening defined by said first and second portions of said body is generally oval when in the open position.

Application No. 10/675,820  
Amendment dated January 23, 2009  
Reply to Final Office Action of July 25, 2008

3. (original) The guard of claim 1, wherein said opening defined by said first and second portions of said body is generally elliptical when in the open position.
4. (original) The guard of claim 1, wherein at least a portion of said upper and lower surfaces of said exterior surface are parallel to one another when said body is in the closed position.
5. (original) The guard of claim 1, wherein at least a portion of said upper and lower surfaces of said exterior surface are angled to one another when said body is in the open position.
6. (original) The guard of claim 1, wherein said side surfaces of said exterior surface are parallel to one another.
7. (original) The guard of claim 1, wherein said body has an exterior surface that has a generally circular cross section along at least a portion of the length of said body when in the closed position.
8. (original) The guard of claim 1, wherein said body has an exterior surface that has a generally oval cross section along at least a portion of the length of said body when in the open position.
9. (original) The guard of claim 1, wherein said body has an exterior surface that has a generally elliptical cross section along at least a portion of the length of said body when in the open position.
10. (original) The guard of claim 1, wherein said first and second portions of said body cooperatively engage each other along the length of the body when in the closed position.
11. (original) The guard of claim 1, wherein said first and second portions of said body are hinged to one another to rotatably articulate relative to one another.
12. (currently amended) The guard of claim 1, wherein said first and second portions of said body rotatably articulate relative to one another about an axis of rotation that is fixed relative to the mid-longitudinal axis of said guard when moved ~~between-between~~ the closed position and the open position.

Application No. 10/675,820  
Amendment dated January 23, 2009  
Reply to Final Office Action of July 25, 2008

13. (original) The guard of claim 1, further comprising a lock adapted to cooperatively engage said body of said guard when said body is in the closed position to hold said body in the closed position.
14. (original) The guard of claim 13, wherein said lock is a collar adapted to cooperatively engage said body of said guard when said body is in the closed position to hold said body in the closed position.
15. (original) The guard of claim 1, wherein said body has a height in the range of 8-25 mm.
16. (original) The guard of claim 1, wherein said opening defined by said first and second portions of said body has a height in the range of 8-20 mm.
17. (original) The guard of claim 1, in combination with a bone removal device for forming through said guard an implantation space across the disc space.
18. (original) The guard of claim 17, wherein said bone removal device is selected from the group consisting of a drill, a trephine, a reamer, an end mill, a chisel, and a burr.
19. (original) The guard of claim 17, wherein said bone removal device has a height in the range of 8-20 mm.
20. (original) The guard of claim 1, in combination with an implant driver sized in part for passage through said opening for passing an implant through said guard and into the disc space.
21. (original) The guard of claim 1, in combination with a spinal implant adapted to be inserted into the implantation space formed through said guard.
22. (original) The guard of claim 21, wherein said implant comprises at least one of bone and a bone growth promoting material.
23. (original) The guard of claim 22, wherein said bone growth promoting material is selected from one of bone, bone derived products, demineralized bone matrix, ossifying proteins, bone morphogenetic protein, hydroxyapatite, and genes coding for the production of bone.

Application No. 10/675,820  
Amendment dated January 23, 2009  
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24. (original) The guard of claim 21, wherein said implant is in combination with a bone growth promoting material.
  25. (original) The guard of claim 24, wherein said bone growth promoting material is selected from one of bone, bone derived products, demineralized bone matrix, ossifying proteins bone morphogenetic protein, hydroxyapatite, and genes coding for the production of bone.
  26. (original) The guard of claim 21, wherein said implant comprises at least one of the following materials: metal, titanium, plastic, and ceramic appropriate for implantation in the human body.
  27. (original) The guard of claim 17, wherein said implant is at least in part resorbable.
  28. (original) The guard of claim 21, wherein said implant is formed of a porous material.
  29. (original) The guard of claim 21, in combination with a chemical substance adapted to inhibit scar formation.
  30. (original) The guard of claim 21, in combination with an antimicrobial material.
- Claims 31-51 (cancelled).